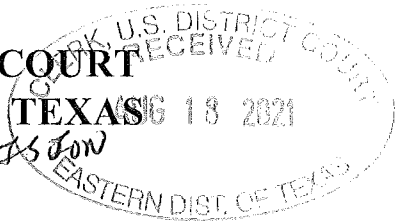


IN THE UNITED STATES DISTRICT COURT
FOR THE ~~NORTHERN~~ DISTRICT OF TEXAS

EASTERN, TYLER DIVISION



6:21CV326 JDK/KNM

MOTION UNDER 28 U.S.C. SECTION 2255,
TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A
PERSON IN FEDERAL CUSTODY

UNITED STATES OF AMERICA of
County of APPEALS Tyler Texas

vs.

Hodgeman J-2-0104-50 379 Pm J2 West
PLACE OF CONFINEMENT RUSK, TX 75785

#1413790

PRISONER ID NUMBER

MR. BRANDON MARGAN ROWE
MOVANT (full name of movant)

241-1692-02

CRIMINAL CASE NUMBER

(If a movant has a sentence to be served in the future under a federal judgment which he wishes to attack, he should file a motion in the federal court which entered the judgment.)

INSTRUCTIONS - READ CAREFULLY

1. This motion must be legibly handwritten or typewritten, and signed by the movant under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form.
2. Additional pages are not permitted except with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities needs to be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
3. Upon receipt, your motion will be filed if it is in proper order. No fee is required with this motion.

4. If you do not have the necessary funds for transcripts, counsel, appeal, and other costs connected with a motion of this type, you may request permission to proceed *in forma pauperis*, in which event you must execute the declaration provided with this motion, setting forth information establishing your inability to prepay the fees and costs or give security therefor. If you wish to proceed *in forma pauperis*, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
5. Only judgments entered by one court may be challenged in a single motion. If you seek to challenge judgments entered by different judges or divisions either in the same district or in different districts, you must file separate motions as to each such judgment.
6. Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the motion you file seeking relief from any judgment of conviction.
7. When the motion is fully completed, the original and two copies must be mailed to the Clerk of the United States District Court for the Northern District of Texas at the appropriate divisional office whose address is:

Abilene Division
341 Pine St, Rm 2008
Abilene, TX 79601

Amarillo Division
205 SE 5th Ave, Rm 133
Amarillo, TX 79101

Dallas Division
1100 Commerce St, Rm 1452
Dallas, TX 75242

Fort Worth Division
501 W 10th St, Rm 310
Fort Worth, TX 76102

Lubbock Division
1205 Texas Ave, Rm 209
Lubbock, TX 79401

San Angelo Division
33 E Twohig Ave, Rm 202
San Angelo, TX 76903

Wichita Falls Division
501 W 10th St, Rm 310
Fort Worth, TX 76102

8. Motions which do not conform to these instructions will be returned with a notation as to the deficiency.

N/A

MOTION

1. Name and location of court that entered the judgment of conviction you are challenging:

241st District Court of Smith County, Tyler Texas

2. Date of the judgment of conviction:

Aug 5, 8, 2005

3. Length of sentence:

25 YEARS

4. Nature of offense involved (all counts):

1 COUNT 1 OF AGGRAVATED SEXUAL ASSAULT TO A CHILD OR MINOR
 ASSAULT WITH A DEADLY WEAPON
 18 U.S.C. §§ 2423 and 18 U.S.C. § 513 OF
 SEXUAL ASSAULT RULES 418, 414, 415, 18 U.S.C. § 924(c)

5. (a) What was your plea? (Check one)

Not guilty ☐Guilty ☒Nolo contendere (no contest) ☐

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?

1 count

Sexual ASSAULT TO A CHILD OR MINOR
 DO TO ASSIST OF COUNSEL

6. If you went to trial, what kind of trial did you have? (Check one)

Jury ☐Judge Only ☒

7. Did you testify at the trial? (Check one)

Yes ☐No ☒

8. Did you appeal from the judgment of conviction? (Check one)

Yes ☒No ☒

9. If you did appeal, answer the following:

Name of Court:

District 241 Court Appeals

Result:

~~Failure to~~ Dismissed due to a Failure to file
 a timely notice of appeal.

Date of result:

Jan. 31, 2007

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any federal court?

Yes ☐ No ☒

11. If your answer to 10 was "Yes" give the following information:

Name of Court: N/A

Nature of proceeding:

N/A Deprived of Rights

Grounds raised:

N/A Deprived of Rights

Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒

Result: N/A

Date of result: N/A

As to any *second* petition, application or motion, give the same information:

Name of Court: N/A

Nature of proceeding:

N/A Deprived of Rights

Grounds raised:

N/A Deprived of Rights

Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒

Result: N/A

Date of result: N/A

As to any *third* petition, application or motion, give the same information:

Name of Court: N/A

Nature of proceeding:

N/A

Grounds raised:

N/A

Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒

Result: N/A Deprived of Rights

Date of result: N/A

Did you appeal to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

First petition, etc.	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Second petition, etc.	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Third petition, etc.	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>

If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

I, DONT know I had a right
I was Deprived from ALL of my Rights

12. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed. However, you should raise in this petition all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

DO NOT CHECK ANY OF THESE LISTED GROUNDS. If you select one or more of these grounds for relief; you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- ☒ (i) Denial of effective assistance of counsel.
- ☒ (j) Denial of right to appeal.

A. Ground One:

MR. BRANDON MORGAN ROWE WAS DEPRIVED OF THE EFFECTIVE OF COUNSEL AND A FAIR TRIAL

Supporting FACTS (tell your story briefly without citing cases or law):

MR. ROBERTSON PROVIDED ADVICE THAT EFFECTIVELY DEPRIVED MR. ROWE OF AN OPPORTUNITY TO GIVE HIS TESTIMONY AT TRIAL. NO OTHER WITNESS COULD HAVE GIVEN THE RECOLLECTION THAT MR. ROWE COULD PROVIDE OF THE EVENTS IN QUESTION. MR. ROWE ADAMANTLY FOUGHT TO TESTIFY AS THE FIRST DEFENSE WITNESS. MR. ROBERTSON'S ADVICE FOR MR. ROWE NOT TO TESTIFY RESULTED IN THE TESTIMONY OF THE STATE'S WITNESS GOING UNREBUTTED. MR. ROBERTSON DEPRIVED MR. ROWE OF AN OPPORTUNITY TO BE HEARD.

B. Ground Two:

MR. ROWE WAS DEPRIVED OF THE EFFECTIVE ASSISTANCE OF COUNSEL DURING THE TRIAL PREPARATION STAGE OF HIS CRIMINAL PROCEEDING.

Supporting FACTS (tell your story briefly without citing cases or law):

MR. ROWE ADOPTS BY REFERENCE THE FACTS CONTAINED IN GROUND ONE HEREIN IN GROUND TWO. HE FURTHER EXPLAINS MR. ROBERTSON PROVIDED LESS THAN ADEQUATE REPRESENTATION (INEFFECTIVE ASSISTANCE OF COUNSEL) WHEN HE FAILED TO RETRIEVE THE AVAILABLE EVIDENCE CONTAINED IN THE PUBLIC RECORD OR IN THE POSSESSION OF THE STATE OF ILL. THIS ADDITIONAL EVIDENCE TO ASCERTAIN THEIR VERACITY. MR. ROBERTSON DEPRIVED AND VIOLATED MR. ROWE'S TRUST DEPRIVED HIM OF HIS ATTORNEY'S HONEST ADVICE OR SERVICE.

C. Ground Three:

MR. ROBERTSON PROVIDED INEFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL WHEN HE FAILED TO OBJECT TO PLAIN ERRORS AT THE TRIAL THAT EFFECTED MR. ROWE'S SUBSTANTIAL RIGHTS.

Supporting FACTS (tell your story briefly without citing cases or law):

MR. ROWE ADOPTS BY REFERENCE THE FACTS IN GROUND ONE AND TWO HEREIN IN GROUND THREE. MR. ROWE EXPLAINS THAT DURING HIS TRIAL, TWO RELATED, YET DISTINCTLY DIFFERENT PLAIN ERRORS OCCURRED. EITHER OF THE TWO ERRORS, BY ITSELF, WOULD HAVE PROVIDED THE JURY WITH THE FACTS THAT MORE THAN LIKELY WOULD HAVE RESULTED IN AN ACQUITTAL. MR. ROBERTSON'S CONDUCT WAS MALICIOUS OR INCOMPETENT TO PREJUDICE NOT ONLY BECAUSE HE WAS DEPRIVED OF A FAIR TRIAL.

D. Ground Four:

THE DISTRICT COURT IMPOSED sentence without Jurisdiction TO MR. ROWE'S enter a Judgment. Moreover, MR. ROBERTSON Failure to object constituted AN EFFECTIVE ASSISTANCE OF COUNSEL AND FURTHER TRIAL.

Supporting FACTS (tell your story briefly without citing cases or law):

MR. ROWE ADOPTS By Reference Facts contained in grounds one(1) two(2), and three(3) here in ground four(4). He further explains, MR. ROBERTSON Provided INEFFECTIVE ASSISTANCE OF COUNSEL by failing to recognize and object to the Court, committing a structural error, MR. ROWE FURTHER SHOWS THAT Road Rule 1929(c) Count of the Indictment depriving the jury of its authority. Should be vacated because of deprived.

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them:

N/A

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing:

N/A

(b) At arraignment and plea:

N/A

(c) At trial:

MA

(d) At sentencing:

N/A

(e) On appeal

N/A

(f) In any post-conviction proceeding:

N/A

(g) On appeal from any adverse ruling in a post-conviction proceeding:

N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future:

N/A

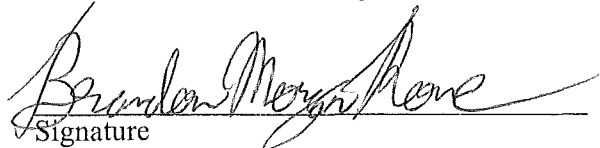
(b) And give date and length of sentence to be served in the future:

N/A

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☒ No ☐

Wherefore, movant prays that the Court grant petitioner relief to which he may be entitled in this proceeding.


Signature

BRANDON MORGAN ROWE
Firm Name (if any)

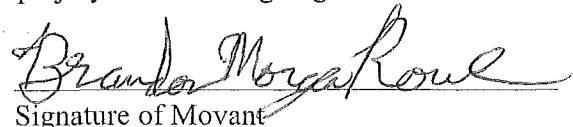
379 Km 2472 West I-20 10410p
Address

RUSH Texas 75785
City, State & Zip Code

N/A
Telephone (including area code)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on 8-28-21 (date).


Signature of Movant